IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE TWENTY FIRST DAY OF DECEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE BILAL NAZKI

and
THE HON'BLE MR JUSTICE S.ANANDA REDDY

WRIT PETITION NO : 23629 of 2001

Between:

1 B. Kishan Yadav, S/o B.Hanumantha Rao Yadav R/o.1-2-471/1, domalguda, Hyderabad - 29.
2 D. Nagabhushan Reddy, S/o.D.Chenna Reddy, Plot No.32, Vidyanagar, Hyderabad - 44.
3 L.P.V.S.Nageswara Rao, s/o L/ Bhramham C/o.Late T.Lakshmipathi, 5-9, Sangeetha nagar, Kukatpally (V), Hyderabad - 72.
4 T. Ashok S/o T.Narasimha Plot No. 71&72, H.No.17-76/2, Raghavendra Colony, Uppal, Hyderabad - 37.
5 Jinka Nagaraju S/o.J.Narayana Swamy
R/o.3-6-66A, Basheerbagh, Hyderabad.
6 R. Padmanabhan S/o.R.K. Rajagopalan 16-127/5, New Mirjalguda, Malkajgiri, Hyderabad - 47.
7 T. Suseela, D/o. D. Siddaiah, Basheerbagh, Hyderabad.
8 K. Venkataramana Rao, S/o. Durgaprasada Rao 1-1-750/3/C, Jahavahar Nagar, Gandhi Nagar, Bakara, Hyderabad - 20
9 M. Robins Paul, S/o. M. Paranjyoti, 1-2-606/2/7, Bandamahisamma Nagar, Indira Park, Hyderabad.

..... PETITIONER(S)

AND

1 The Hon'ble Chief Commissioner, Income Tax, A.P. Hyderabad.
2 The Income Tax Officer, Circle-4, (SALARIES) Ward-4(3) Shapur House, Hyderabad.
3 The Managing Director , Indian Express, (MADHURAI) Ltd., Express Publications (M), Ltd., Express Estate, Mount Road Chennai.
4 The Branch manager, Indian Express, (MADHURAI) Ltd., Domalguda, Hyderabad - 29.

5 Sundareshan, Chartered Accountant, 1-645, Basheerbagh, Hyderabad.

.....RESPONDENT(S)

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to Petitioners , Sweepers, Attenders and Jr. Clerks herein, prays that this Hon'ble court may be pleased to call for the records along with the representations of the petitioners from the respondents to declare the action of respondents in Tax Deducted at Sourceon126383,126385,129209,220257,129214,127080,129213,126384&220256 is quite illegal, arbitrary, unethical and consequently quash the same and issue a Writ, Order or direction more particularly one in the nature of Writ or Certiorari, directing the respondents to refund the TDS amount of Rs.2,67,396/- with interest from the date of illegal deduction to till the date of realisation and pass

Counsel for the Petitioners: MR.B.BHASKARA REDDY

Counsel for the Respondent Nos.1 and 2: MR.S.R.ASHOK (SC FOR INCOME TAX)

Counsel for the respondents 3 and 4: Mr. S.Ravindranath,

The Court made the following :

HON'BLE MR. JUSTICE BILAL NAZKI

AND

HON'BLE MR. JUSTICE S. ANANDA REDDY

W.P.No. 23629 of 2001

ORDER: (Per Hon'ble Mr. Justice Bilal Nazki)

This writ petition has been filed by 9 petitioners seeking refund of the amounts deducted at source amounting to Rs.2,67,396/- along

with interest as it was deducted illegally.

The case of the petitioners is that they were in regular service of 4th respondent, branch office at Hyderabad. The 4th respondent introduced a voluntary retirement scheme in the year 1995-96 to reduce the strength of employees. The scheme, according to the petitioners, was not even voluntary, but was a compulsory retirement scheme because they were threatened that if they did not opt for retirement, they could be transferred to any other branches in the country or their services could be terminated. Under these circumstances, they were compelled to accept the scheme and retire. The 4th respondent management agreed to pay Rs.1.5 lakhs or Rs. Two lakhs to such employees who seek retirement basing on their seniority. At the time of retirement, the employer deducted income tax wrongly from out of the amounts payable to the petitioners under the provisions of the Income Tax Act (hereinafter referred to as “the Act”), although they were compelled to retire from service. It is submitted that the deduction of TDS amounts was illegal as none of the petitioners received an amount exceeding Rs.5.00 lakhs. 60 employees filed an appeal before the Commissioner of Income-Tax, Hyderabad. The petitioners also filed Form No. 2A returns before the Deputy Commissioner of Income Tax. 30 employees of the same batch received TDS amounts with interest through 2nd respondent in the assessment year 1997-98. Remaining 30 employees failed to get refund of TDS amounts. Representation were also sent to the 3rd respondent on 28.5.1999 and 16.6.1999 to get the approval from the 1st respondent for exemption of income tax under Section 10 (10C) of the Act, but they did not give any response.

2nd respondent filed counter in which it is contended that at the time of retirement, the petitioners were not exempted from tax in terms of Section 10 (10C) of the Act. According to Section 10 (10C) of the Act, as it stood at the relevant point of time, the exemption would only be available after the employer had obtained an approval of the scheme of voluntary retirement from Chief Commissioner of Income

Tax. Since the employer had failed to obtain an approval from the Chief Commissioner of Income Tax, therefore there was no question of granting exemption. Sub-section (10C) of Section 10 of the Act as it stood at the relevant point of time reads as under,

> "(10C) any amount received by an employee of a public sector company or of any other company at the time of his voluntary retirement in accordance with any scheme or schemes of voluntary retirement:
>
> Provided that the schemes of the said companies governing the payment of such amount are framed in accordance with such guidelines as may be prescribed for the public sector companies or for other companies and such guidelines may, inter alia, include criteria of economic viability and such schemes in relation to companies (other than public sector companies) are approved by the Chief Commissioner or, as the case may be, Director-General in this behalf;"

When the case came up on earlier occasion and when it was pointed out by the 2nd respondent that since the employer failed to get approval of the Chief Commissioner of Income Tax, therefore the petitioners are not entitled to any refund and were not exempted from tax, we directed the 3rd respondent to file counter affidavit as they did not appear in the case on 1.7.2004. Accordingly counter affidavit was filed by respondents 3 and 4. It is submitted in the counter affidavit that the petitioners 1, 6 and 7 were Attenders/Sweepers, petitioners 2 and 3 were Junior Clerks, petitioner No.4 was Assistant Editor, Petitioners 5 and 8 were Sub-Editors and petitioner No.9 was a Key Board Operator. It was further submitted that the management put up a notice on 12.8.1995 explaining the terms and conditions of the scheme and called for options from the individual employees. The main object of introducing the scheme was to advance computer technology. No restrictions on age and service were imposed. However, it is denied that the petitioners were compelled to opt for the voluntary retirement scheme and forced to apply for the same under the threat of transfer of the employees any where in India. The

petitioners along with 44 other employees opted for voluntary retirement. It is further submitted that the respondents have not received or located the representations made allegedly by the petitioners on 28.5.1999 and 16.6.1999. It is contended that Section 10 (10C) of the Act stipulates certain conditions to obtain exemption from deducting the TDS for those who opted for voluntary retirement from service. It is further contended that the guidelines are laid down for the purpose of Section 10 (10C) of the Act in rule 2BA of the Income Tax Rules 1962 and the exemption would be available under the guidelines only to those persons who had completed 10 years of service or completed 40 years of age. There are other guidelines laid down. Since the petitioners had not fulfilled any requirement of age or service, therefore no approval was obtained. The respondents have also given the particulars of the petitioners and submitted that none of them would fall within the scheme.

We have seen the record. Mr. T.Ashok (petitioner No.4), Asst. Editor was 46 years of age and had service of 8 years and 2 months. Mr. M. Robin Paul (petitioner No.9), Key Board Operator was 40 years of age and had service of 13 years and 5 months. Therefore if the scheme had been sent for approval, at least these two petitioners would have got the benefit of exemption. The respondents-Income Tax Department was right in not granting the exemption and not refunding the TDS amount because the scheme had not been approved by the Chief Commissioner of Income Tax. We are sure if the employer had gone to the Chief Commissioner of Income Tax for approval of the scheme, the two persons mentioned hereinabove viz., petitioners 4 and 9 would have got the benefit. Therefore it was because of the employer that these two persons were made to pay the tax by way of deduction at source which they could have saved. A similar view was taken by the Delhi High Court reported in *Jodhraj Singh Vs. Union of India and others* .

In these circumstances, we allow the writ petition to the extent of the petitioners 4 and 9 and in peculiar circumstances of the case, direct the employer i.e., respondents 3 and 4 to refund the tax to the

petitioners 4 and 9 which was deducted at source at the time of voluntary retirement. They shall also give interest @ 6% P.A. No costs.

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BN J.

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SAR J.

Dt.21.12.2004

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That rule nisi has been made absolute to the extent indicated above. Witness the Hon'ble Sri Devinder Gupta, Chief Justice, on this the TUESDAY, THE TWENTY FIRST DAY OF DECEMBER
TWO THOUSAND AND FOUR

Sd/-

ASST. REGISTRAR

To

The Hon'ble Chief Commissioner, Income Tax, A.P. Hyderabad.
2 The Income Tax Officer, Circle-4, (SALARIES) Ward-4(3) Shapur House, Hyderabad.
3 The Managing Director , Indian Express, (MADHURAI) Ltd., Express Publications (M), Ltd., Express Estate, Mount Road Chennai.
4 The Branch manager, Indian Express, (MADHURAI) Ltd., Domalguda, Hyderabad - 29.
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